

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6030 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

STATE OF GUJARAT

Versus

DECEASED - KHODABHAI KALIDAS MUKHI

Appearance:

Mr. D.N. PATEL, A.G.P. for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/10/1999

ORAL JUDGEMENT

1. Respondents No.1/1 to 1/4 were served with notice of this petition, but none has appeared on their behalf. As such learned A.G.P. has been heard and the impugned order has been examined.

2. The prayer in this petition is to quash the order dated 30.3.1999, Annexure : B, passed by the Urban Land

Tribunal in Appeal No.9 of 1999.

3. Brief facts are that the land holder Khodabhai Kashidas filled in form No.1 under Section 6(1) of the Urban Land (Ceiling & Regulation) Act in which he declared 4390 sq.mtrs. land of Survey No.3 of Memnagar and 9510 sq.mtrs. land of Survey No.27 in his possession. The total area of land so declared to be in possession of the land holder was 13860 sq.mtrs. The land holder expired thereafter and the proceeding continued against his heirs. Statement under Sec. 8(3) of the Act was sent on 12.3.1984. The Competent Authority declared on 10.3.1986, 12860 sq.mtrs. land as surplus with the heirs of deceased land holder. Proceedings under Sections 9, 10(1), 10(3) and 10(5) of the Act were completed. Compensation was also awarded under Section 11 of the Act. Order for compensation was passed on 14.4.1993. Possession of the surplus land was taken over on 7.1.1993 by the petitioner. The heirs of the land holder slept over for a period of about 13 years and they preferred Appeal No.9/99 before the Urban Land Tribunal on 27.1.1999.

4. Specific objection was taken by the petitioner before the Tribunal that the Appeal is hopelessly time barred. This plea of the petitioner was not even touched by the Appellate Tribunal rather it was totally ignored. The Tribunal, on the other hand, entered into merits of the case and found that the order of the competent Authority was illegal. Still the Appellate Authority partly allowed the Appeal. It is difficult to understand what is concept of partly allowing the Appeal when the entire order of the Competent Authority was set aside and the matter was remanded to the competent Authority for fresh decision after affording opportunity to the appellant for producing evidence and hearing the parties.

5. Learned A.G.P. has rightly contended that the Appeal was hopelessly time barred and no sufficient explanation explaining 13 years delay was offered or proved by the appellants (respondents of this petition). Consequently the Appeal should have been dismissed being time barred. I find substance in this contention. Apparently the Appeal was hopelessly time barred. The order of the competent Authority was dated 10.3.1986 whereas the Appeal was filed on 27.1.1999. The appellate Authority has not at all considered that this hopeless delay was in any way explained by the appellants before him. If the Appeal was hopelessly time barred and the delay was neither condoned nor was liable to be condoned there was no justification for the Tribunal to enter into

the merit of the case. In this view of the matter the order of the Appellate Authority is totally erroneous and cannot be sustained.

6. The petition, therefore, succeeds and is allowed.

The order of the Appellate Authority dated 30.3.1999, Annexure : B to the writ petition, is hereby quashed. As a consequence to this the proceeding before the Competent Authority pending in perusance of order of the Urban Land Tribunal shall stand abated. No order as to costs.

sd/-

Date : October 18, 1999 (D. C. Srivastava, J.)

sas